



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201511035

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEC 16 2014

Uniform Issue List: 408.03-00

T.I.E.P. R.A.T.I

LEGEND:

Taxpayer A =

Taxpayer B =

IRA C=

Financial Institution D=

IRA E=

Financial Institution F =

IRA G =

Individual H =

Investment Firm I =

Partnership J =

Custodian K =

IRA L =

IRA M =

IRA N =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Dear :

This is in response to your letter dated June 6, 2014, submitted on your behalf by your authorized representative, in which you requested a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalties of perjury in support of your request:

Taxpayers A and B are husband and wife. Taxpayer A states that he received distributions of Amounts 1 and 2 from IRA C, a Simplified Employee Pension Plan (SEP)-Individual Retirement Arrangement, which was maintained by Financial Institution D. Taxpayer A received a distribution of Amount 3 from IRA E, and Taxpayer B received a distribution of Amount 4 from IRA G. Both IRA E and IRA G were maintained by Financial Institution F. Taxpayers A and B assert that their failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to errors made by Individual H from Investment Firm I, which led to the amounts being placed in non-IRA accounts. Taxpayers A and B intended to roll over the amounts withdrawn from IRA C, IRA E and IRA G into new rollover IRAs that would invest in Partnership J, and they erroneously believed that the investment in Partnership J had been made through new IRAs established in their names. Taxpayers A and B further represent that the amounts are now held by a valid IRA Custodian, Custodian K, and the amounts have not been used for any other purpose.

Taxpayers A and B represent that they wished to diversify their investments and contacted Investment Firm I about rolling over a portion of their IRA assets to Investment Firm I. Individual H, principal of Investment Firm I, managing member of Partnership J, and a registered investment advisor and investment

manager, indicated in a sworn statement that he advised Taxpayers A and B that Investment Firm I was capable of accepting, administering, investing and managing Taxpayers A & B's IRA assets, while preserving the IRA character of the funds transferred to Investment Firm I.

Taxpayer A made an initial investment in Partnership J, in Amount 1 in June 2013 when, at Taxpayer A's direction, Financial Institution D sent a check for Amount 1 directly to Partnership J for the benefit of Taxpayer A. Prior to sending the check, Taxpayer A completed and signed a subscription agreement to invest Amount 1 in Partnership J, as an IRA investment. At relevant places in the subscription agreement, Taxpayer A indicated that the investment of Amount 1 was an IRA investment. Further, in his sworn statement, Individual H indicates that Taxpayer A clearly instructed that Amount 1 was to be invested as IRA funds. It was Taxpayer A's understanding that Individual H would establish a rollover IRA account to hold Amount 1 and that this account would be invested in Partnership J. Individual H acknowledges that he agreed to arrange for custodianship for the investment and that he directed Taxpayer A to leave the sections of the subscription agreement for a custodian's signature blank for Individual H to complete. However, Individual H acknowledges that he countersigned and accepted the subscription agreement without a custodian's signature, and no new IRA was established at that time.

Taxpayers A and B represent that they made subsequent investments in Partnership J in the same manner. At the direction of Taxpayer A, Financial Institution F wired Amount 3 from IRA E directly to Partnership J on October 31, 2013. Finally, at the direction of Taxpayer B, Financial Institution F wired Amount 4 from IRA G directly to Partnership J on October 31, 2013. At the direction of Taxpayer A, Financial Institution D sent Amount 2 from IRA C by check directly to Partnership J on December 18, 2013. For each investment, Taxpayers A and B completed a new subscription agreement and indicated that IRAs were to be the beneficial owners of the Partnership J interest. In addition, Individual H countersigned and accepted each subscription agreement without arranging for or securing a custodian's signature.

Individual H acknowledges in his sworn statement that he erred when he overlooked the requirement that the amounts transferred by Taxpayers A and B from their IRAs to Partnership J be held by a qualified IRA custodian, even though at all times Taxpayers A and B had indicated their intent to execute rollovers to new IRAs at Partnership J. Individual H indicates that he assumed that Taxpayers A and B's previous IRA custodians (Financial Institution D and Financial Institution F) would continue in their capacity as custodians for the amounts that were placed in new accounts with Partnership J.

Taxpayers A and B indicate that they asked Individual H about whether he had established custodians for the accounts with Investment Firm I, and Individual H responded that Investment Firm I had completed the steps necessary to maintain

the IRA status of the funds and that all was in order. In addition, Investment Firm I set up and titled the accounts to indicate that they were IRAs, in a manner that Taxpayers A and B represent led them to conclude that their previous custodians were somehow still acting as custodians for the assets. Once Investment Firm I had titled the accounts in this manner, it continued to refer to the improperly-titled accounts as IRAs in correspondence with Taxpayers A and B, including on the Partnership J's Schedule K-1 that Investment Firm I issued for each of the three accounts opened with Partnership J. Investment Firm I also indicated on the Schedule K-1 issued for each account that the beneficial owners of Taxpayers A and B's partnership interest in Partnership J were IRAs.

Taxpayers A and B assert that they did not learn that Partnership J was not a qualified IRA custodian until their certified public accountant discovered the error during the preparation of their annual income taxes in April 2014. Immediately thereafter, Taxpayers A and B represent that they located Custodian K, an IRA custodian and administrator, and established three new self-directed IRAs, IRA L, IRA M and IRA N. On May 14, 2014, Taxpayer A transferred Amounts 1 and 2 (plus earnings), originally from IRA C, to IRA L. Taxpayer A transferred Amount 3 (plus earnings), originally from IRA E, to IRA M. Taxpayer B transferred Amount 4 (plus earnings), originally from IRA G, to IRA N. Shortly thereafter, Taxpayers A and B submitted this ruling request.

Based on the foregoing facts and representations, you request a ruling that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1 and Amount 2 from IRA C, Amount 3 from IRA E and Amount 4 from IRA G.

Section 408(a) of the Code defines an individual retirement account as a trust that meets certain conditions, including the requirement that the trustee of the trust must be a bank (as defined in Section 408(n) of the Code) or other person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will administer the account will be consistent with the requirements of such section. Section 408(h) provides that a custodial account may be treated as a trust if the custodian meets those requirements, and if the account would otherwise satisfy the 408(a) requirements. Section 1.408-2(e) of the Income Tax Regulations sets forth stringent requirements an applicant must meet in order to be approved to serve as an IRA trustee or custodian.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the

use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayers A and B are consistent with their assertion that their failure to complete a rollover of Amounts 1, 2, 3 and 4 was a result of errors committed by Individual H, Investment Firm I and Partnership J. Taxpayers A and B intended to rollover the amounts withdrawn from IRA C, IRA E and IRA G into new rollover IRAs that would invest in Partnership J, and they believed that the investment in Partnership J had been made through new IRAs established in their names. The documentation also demonstrates that Individual H's processing of the investments in Partnership J as investments in IRAs (despite the lack of signatures by an IRA custodian) and the titling of the accounts in the names of the IRAs' previous custodians led Taxpayers A and B erroneously to believe that no further steps were needed to ensure that the investments were held through IRAs.

Therefore, pursuant to section 408(d)(3)(i) of the Code, the service hereby waives the 60-day rollover requirement with respect to the distribution of Amounts 1 and 2 from IRA C, Amount 3 from IRA E, Amount 4 from IRA G. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to the contributions, the contributions of Amounts 1 and 2 to IRA L, Amount 3 to IRA M, and Amount 4 to IRA N with Custodian K on May 14, 2014, will be considered valid rollover contributions.

However, the ruling request does not apply to earnings on Amounts 1, 2, 3 and 4. Section 408(d)(3)(I) of the Code provides for waivers only with respect to distributions and not with respect to earnings on such amounts after distribution. Therefore, the transfer of any amounts representing earnings on Amount 1 and 2 from IRA C, earnings on Amount 3 from IRA E, and earnings on Amount 4 from IRA G are not considered rollover contributions within the meaning of section 408(d)(3) of the Code. Rather, they are considered IRA contributions under section 408(a)(1) of the Code, and these amounts are subject to the rules and limits that pertain thereto.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

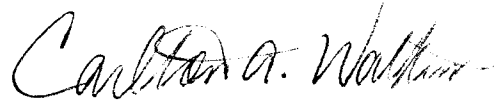
This letter is directed only to the taxpayers who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter is being sent to your authorized representative in accordance with a Power of Attorney (Form 2848) on file with this office.

If you have any questions, please contact
phone at _____ or fax at _____
correspondence to SE:T:EP:RA:T1.

(I.D. # _____) by _____
Please address all

Sincerely yours,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose

cc: